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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/220,986	12/23/98	SCHWARTZ	S 17649-20

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EXAMINER

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 10/10/00

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 7-3-80 & 7-24-00
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- Of the above, claim(s) 1-13 & 19-20 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 14-18 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

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DETAILED ACTION

The declaration, the request for the extension of time and amendment dated 7-3-00 and the supplemental amendment filed on 7-24-00 are acknowledged.

1. Applicant's election with traverse of the species in claims 14-18 in Paper No. 8 is acknowledged. The traversal is on the ground(s) that was as set forth on page 5 of paper 8. This is not found persuasive because applicant has not placed on record that the species set forth are obvious variants.

The requirement is still deemed proper and is therefore made FINAL.

Claims included in the prosecution are 14-18.

Claim Rejections - 35 U.S.C. § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 14-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what applicant intends to convey by 'Dead sea salt. What is a water soluble base as recited in claims 14 and 18? The term 'such as' in these claims is indefinite.

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What is being conveyed through claim 15? Isn't dead sea salt water soluble? If so how can salt exist in granular form?

These rejections are maintained since applicant has not addressed this issue adequately.

Claim Rejections - 35 U.S.C. § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

5. Claims 14-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Stavroff (US 5,866,145).

Stavroff discloses compositions containing dead sea salts, an emollient, a skin conditioner and fragrance (note the abstract, and columns 1-2).

Applicant's arguments have been fully considered, but are not found to be persuasive. Applicant's only argument is that Stavroff is not prior art based on the declaration provided. This argument is not found to be persuasive for the following reasons. Instant claims are broader in scope than the compositions in the declaration with

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regard to a) the amounts of the dead sea salts; 2) the nature of the composition claimed in instant claims, i.e., instant claims are for exfoliation and containing pumice or silica.

Therefore, the reference is deemed to be still prior art.

Claim Rejections - 35 U.S.C. § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 14-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stavroff cited above, further in view of Steward (5,922,313) and Eppstein (5,885,593) and Fowler (5,720,961).

Stavroff does not teach instant additives in the skin treatment compositions.

Steward teaches that the addition of additives such as propylene glycol, aloe and lipomulse are common practice in the art (note the abstract, column 4 and examples).

Epstein teaches that the addition of components such as sun screens, triglycerides (oils), emulsifiers such as Lipowax and Lipocol in skin care compositions is a common practice in the art (note the abstract, columns 5 and 6).

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Fowler teaches that the addition of components such as sun screens, humectants, eugenol, stearic acid and emulsifiers such in skin care compositions is a common practice in the art (note the abstract and examples).

The inclusion of components such as emollients and others not taught by Stavroff would have been obvious to one of ordinary skill in the art since these are commonly used components in skin care preparations as taught by Steward, Epstein and Fowler and one would expect the best possible results by adding these components.

8. Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stavroff cited above, further in view of Steward (5,922,313) and Eppstein (5,885,593) and Fowler (5,720,961) as set forth above, in combination with Chodosh (5,827,870).

Stavroff, Steward, Eppstein and Fowler do not teach the addition of pumice in the compositions.

The reference of Chodosh which discloses an antimicrobial composition teaches that the addition of pumice in body scrubs is a routine practice in the art (note col. 5, lines 62-65). The addition of other scrubbing agents expecting the additional exfoliating effect would have been therefore, obvious to one of ordinary skill in the art.

Applicant's arguments have been fully considered, but are not found to be persuasive. Applicant's arguments again pertain to Stavroff as the prior art. These have been addressed above.

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9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *G.S. Kishore* whose telephone number is (703) 308-2440.

The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, T.K. Page, can be reached on (703)308-2927. The fax phone number for this Group is (703)305-3592.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [thurman.page@uspto.gov].

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All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1235.



Gollamudi S. Kishore, Ph. D

Primary Examiner

Group 1600

gsk

October 4, 2000